



State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY DIVISION OF ENVIRONMENTAL RESPONSE AND REMEDIATION

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July 5, 2000

Mr. Jack A. Blackwell, Regional Forester
United States Department of Agriculture
Forest Service
Intermountain Region
Federal Building, 324 25th Street
Odgen, Utah 84401-2310

Dear Mr. Blackwell:

We received your letter of May 17, 2000 regarding response actions that the Forest Service plans to initiate at sites in American Fork Canyon pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Your letter requests that the Utah Department of Environmental Quality (UDEQ) identify State applicable or relevant and appropriate requirements (ARARs). Please find enclosed a table which lists potential ARARs for the activities that will be conducted by the Forest Service. There are three points I would like to clarify regarding compliance with ARARs:

1. Since potential alternatives to address all the environmental problems in the canyon have not yet been developed, it is difficult at this time to define exactly which regulatory standards will be ARARs. The requirements presented in the attached table are commonly identified as being applicable or relevant and appropriate at sites where removal or remedial actions under CERCLA are conducted. As more information becomes available about the nature of the contamination and potential alternatives to address it, the identification of ARARs can be refined.
2. Your letter indicates that the suspected hazardous substances on site are wastes from the beneficiation, processing, and extraction of ores, and are therefore exempt from regulation under the Resource Conservation and Recovery Act (RCRA). However, insufficient information has been provided for us to agree that a proper determination of the regulatory status of the waste material has been made. The exemption cited in your letter, commonly known as the Bevill exemption, is narrowly applied to solid wastes based on the criteria of 40 CFR 261.4(b)(7). In

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order to verify that the exemption applies to the wastes in American Fork Canyon, the Forest Service will have to document that the waste materials at each site are included among the solid wastes listed in 40 CFR 261.4(b)(7)(ii), and that the processes involved in generating the wastes are restricted to the activities described in 40 CFR 261.4(b)(7)(i). This may be difficult to do if there is only limited information available on how the wastes were generated. The Forest Service should also evaluate the sites sufficiently to determine whether past activities have resulted in the presence of other types of hazardous substances besides those related to ores and minerals. For example, any evidence of buried tanks, electrical transformers, or other types of waste disposal should also be investigated.

3. Your letter indicates that the National Contingency Plan requires that ARARs be met to the extent practicable for CERCLA removal actions (40 CFR 300.415(i)). However, this does not mean that ARARs only need to be met if it is convenient to do so. The NCP clarifies that the criteria for determining whether compliance with ARARs is practicable include the urgency of the situation and the scope of the removal action to be conducted. Urgency may be a factor in complying with ARARs when a time-critical removal action must be done to stabilize a site quickly in order to protect human health or the environment. The scope of the action relates to removal objectives. Often, the objective of a removal action is to address a particular problem at a site where a more comprehensive remediation will eventually be implemented. If this is the case, then there may be some ARARs relating to the comprehensive cleanup that would not be practicable for the removal action because of its limited scope. For example, compliance with ARARs for ground water restoration may not be within the scope of a removal action that focuses only on source removal, but it is assumed that ground water will eventually be addressed through the remedial process. If the objective of a removal action is to implement a final overall cleanup of a site, then it is difficult to justify that any ARARs are not practicable.

If you have any questions or concerns regarding the enclosed table of potential ARARs or the issues discussed above, please contact me at (801) 536-4172.

Sincerely,



Duane Mortensen, Federal Facilities Section Manager
Division of Environmental Response and Remediation

DM/np

Enclosure(s)

cc: Suzanne Buntrock, P. E., USDA Forest Service